Supreme Court, U.S.
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No. 94-2070

In The

Supreme Court of the United States

October Term, 1995

JOHN A. LANGDALE,

Petitioner,

v.

HUNTERDON COUNTY AND COMMUNITY CARE ASSOCIATION OF HUNTERDON,

Respondents.

On Petition For Writ Of Certiorari To The New Jersey Supreme Court (Docket #38,972 Denial Of Petition For Certification)

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF FACTS

Plaintiff/Appellant, John A. Langdale, was involved in an automobile accident on October 4, 1977 while engaged in the course of his employment with the Community Care Association of Hunterdon County, hereinafter "The Association". As a result of the accident, plaintiff sustained minor injuries for which he was treated and then released from a nearby hospital.

Approximately two weeks following his accident, plaintiff began treating with a neurologist due to recurring headaches. In November 1977, he resigned from his full-time employment with the Association and began to work part-time as a consultant. At some point in early 1978, plaintiff terminated his part-time employment with the Association and moved to Florida with his wife and son where he started a small business.

In January 1979, plaintiff returned to New Jersey. Purportedly suffering from various psychological afflictions, plaintiff allegedly contacted Richard O'Brien, then an officer of the Association, in an effort to file a workers' compensation claim. It was plaintiff's position that these psychological afflictions were directly attributable to the injuries he received in the October 1977 automobile accident. According to plaintiff, Mr. O'Brien advised him that he was not entitled to workers' compensation benefits because the accident was his fault. However, notwithstanding this advice, plaintiff continued to make efforts to file a claim with both the Association's insurance

agent, Millbank, Botz & Martin, Inc., and the Association's workers' compensation insurer. Evidently, representatives of both entities assured plaintiff that a claim was being filed on his behalf.

For reasons which are not clear, plaintiff ceased pursuing a claim for workers' compensation benefits after October 1979. Nevertheless, he resumed his efforts to file such a claim in August 1981, only to find that the claim was then time-barred by the statute of limitations.

On August 25, 1981, plaintiff filed a claim for disability benefits with the New Jersey Department of Labor and Industry. This claim was subsequently denied by the Department on October 5, 1981, because the alleged disabilities were work-related and, thus, not compensable.

On August 23, 1989, plaintiff filed suit in the United States District Court for the District of Columbia. The Complaint was dismissed by Order of the Honorable John H. Pratt dated January 23, 1990. Plaintiff then filed suit in the Superior Court of New Jersey, Law Division which resulted in Summary Judgments in favor of defendants, Community Care Association of Hunterdon and Hunterdon County, and plaintiff further pursued the matter by way of appeal to the Appellate Division and then to the New Jersey Supreme Court. Plaintiff's theory appears to be that a fraud was perpetrated upon him by various individuals associated with the Community Care Association of Hunterdon County which prevented him from filing suit to collect workers compensation benefits, to which he feels he was due, until after the statute of limitation date had fallen. As to defendant, Hunterdon County, plaintiff appears to assert that he was an

employee of Hunterdon County, rather than an employee of the Community Care Association of Hunterdon. The Appellate Division found that the lower court judge's conclusion that plaintiff was not a Hunterdon County employee was supported by substantial credible evidence in the record and that plaintiff did not provide any support for his contention that he was a Hunterdon County employee. The Appellate Division, therefore, affirmed Summary Judgment granted to Hunterdon County, as well as affirming Summary Judgment granted to the Community Care Association, substantially for the reasons set forth by Judge Bernhard in his oral opinion of May 1, 1992. Plaintiff's Petition for Certification to the New Jersey Supreme Court was denied.

REASONS FOR DENYING THE WRIT

POINT I

THE PETITION CONTAINS MISSTATEMENTS OF FACT AND LAW WHICH PERTAIN TO THE QUESTION OF WHETHER THE WRIT SHOULD BE GRANTED

The brief submitted by petitioner in support of the writ contains misstatements of fact and references to "facts" which do not appear of record before this Court, which confuse the record and bear on the questions of the issues which may properly be before this Court.

The petitioner presents questions for review, as well as his "statement of the case" and "argument" all of which operate under the assumption that the employer committed a fraud upon the plaintiff. However, it was

clearly established in the courts below that no fraud was proven. (See Pa10-11 and Pa4, 5 & 7.[1])

The initial question that petitioner should have asked was whether any fraudulent misrepresentations on the part of certain employees, directors or officers of the Community Care Association resulted in the petitioner's failure to file his worker's compensation claim. However, as was found by the court below, petitioner defeated his own fraud claim by representing in his answers to Interrogatories that he did not rely upon the alleged misrepresentations and that he continued to pursue his worker's compensation claim after the alleged misrepresentations. (Ra1) Accordingly, the Law Division and the Appellate Division of the Superior Court of New Jersey properly found petitioner's fraud claim had no merit and the Supreme Court of New Jersey denied certification.

Further, plaintiff indicates in his "statement of the case" at page 3 of his Petition, "whereas employer/ respondents found themselves undeniably applied to well prior to *N.J.S.* 34's [sic] October 1979 deadline . . . " There is nothing in the record to support the statement that petitioner applied for worker's compensation benefits prior to the October 1979 deadline. Petitioner continues in the following paragraph of his statement of the case to assert that "Hunterdon's court insisted *N.J.S.* 34:15-51 requires an injured worker apply directly to the State's Division of Worker's Compensation within 24 months *regardless* of whether the employer is guilty of

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[1] Cites to Respondent's Appendix are referred to as Ra ___, Petitioner's Appendix as Pa ___.

criminal misrepresentation, regardless that such contributes to a claimant's illness, regardless of mental disorder." (Emphasis in original) Again, there is nothing in the record or anywhere else which found petitioner's employer guilty of criminal misrepresentation or which found that any alleged misrepresentation contributed to any illness from which petitioner was suffering.

POINT II

THE QUESTIONS PRESENTED FOR REVIEW BY PETITIONER WERE DECIDED ON ADEQUATE AND INDEPENDENT STATE GROUNDS

Petitioner is questioning a state worker's compensation statute, N.J.S.A. 34:15-51, as well as a claim for actionable fraud. The requisite elements of actionable fraud are well established in New Jersey law. They are (1) the defendant's false representation, (2) his knowledge of or belief in its falsity, (3) his intention that plaintiff rely, (4) plaintiff's reasonable reliance, and (5) plaintiff's consequent damage. *Bilotti v. Accurate Forming Corp.*, 188 A. 2d 24, 39 N.J. 184, 206 (1963); *Shebar v. Sanyo Business Systems*, 526 A. 2d 1144, 218 N.J. Super. 111, 117 (App. Div. 1987).

The Orders of the Law Division and the Appellate Division addressed the issues relating to worker's compensation and fraud and were both grounded completely in state law as no federal claim was raised at that point in time. (Pa4, 5, 7, 10 & 11) They held that, under New Jersey law, petitioner's claim for worker's compensation

was time-barred, that the Superior Court had no jurisdiction over worker's compensation claims, that the elements of fraud had not been proven and that the fraud action was time-barred.

As set forth in Pa2, Petition for Certification of the Judgment to the Supreme Court of New Jersey was denied by that Court. Therefore, the New Jersey Supreme Court never considered the matter on the merits. It was only in petitioner's Petition for Certification to the Supreme Court of New Jersey that any federal question was raised. Therefore, the decisions of the New Jersey courts in this matter were made entirely on adequate and independent state grounds and, as such, the Supreme Court of the United States has no jurisdiction to review this matter. *Michigan v. Tyler,* 436 U.S. 499 (1978); *Parker v. North Carolina,* 397 U.S. 790 (1970).

POINT III

PETITIONER FAILED TO RAISE HIS FEDERAL CLAIMS IN THE TRIAL COURT OR AT THE APPELLATE DIVISION AND DID NOT RAISE IT PROPERLY TO THE NEW JERSEY SUPREME COURT.

Petitioner did not first raise any federal claim in this matter until his Petition for Certification to the New Jersey Supreme Court. In his Petition to the New Jersey Supreme Court, petitioner alleged due process violations of his rights under the Fifth and Fourteenth Amendments to the United States Constitution. However, the New Jersey Supreme Court denied petitioner's Petition for Certification. (Pa2)

There is a presumption that silence by a State Court on a federal question is deemed to be for want of proper presentation. *Webb v. Webb,* 451 U.S. 493 (1981). Since petitioner did not raise any federal claim in a timely and proper fashion in the state courts, the Supreme Court should not grant certiorari. U.S. Sup. Ct. R. 15.1.

POINT IV

RESPONDENT, HUNTERDON COUNTY, WAS DISMISSED FROM THE CASE ENTIRELY ON INDEPENDENT AND ADEQUATE STATE GROUNDS

It should also be pointed out that this respondent, Hunterdon County, was dismissed from this case on grounds entirely unrelated to any alleged fraud committed by agents of the Community Care Association of Hunterdon, or to the disposition of any claim for worker's compensation. Respondent, Hunterdon County's connection with this case was that petitioner claimed that Hunterdon County was petitioner's employer in that the Community Care Association of Hunterdon was listed in a telephone listing under the general Hunterdon County listings. However, proofs were submitted to the Courts below which established that the Community Care Association was a separately incorporated, independent organization, and not an arm of Hunterdon County government. These factual findings are not being appealed by petitioner.

CONCLUSION

For the foregoing reasons, John A. Langdale's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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EXCERPTS FROM INTERROGATORIES

25. Were any representations made to you by any agent of the defendant regarding workers' compensation benefits? If so, identify each individual and the precise representation which he or she made to you.

Yes. I was told by the Association's Counsel O'Brien that fault would bar my claim. He, being a lawyer, knew reasonable fault does not bar a claim.

I was given an insurance agent's phone number by Jones & O'Brien (Chairman & Counsel).

I was told by that agent from about 2 or 3/79 until 10/79 that a claim was being processed (Agent: Millbank, Botz & Martins, Wyckoff, N.J. now named "Firm").

26. Did you rely on any representation made to you by any agent of the defendant as identified in interrogatory #25?

Absolutely, that the insurance agent was filing a W.C. Claim. As regards O'Brien's opinion that fault barred my claim, No. I believed at least unemployment insurance was available, but I was very mentally disturbed and confused. When the insurance agent disappeared in or about 10/79, if I had been competent, I should have brought legal action.